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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/620,044
Filing Date: July 15, 2003
Appellant(s): D. ET AL.

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Joseph B. Ryan
For Appellant

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EXAMINER'S ANSWER

This is in response to the appeal brief filed *December 9, 2008* appealing from the

Office action mailed July 9, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2003/0012141   Gerrevink   1-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

Claims 20 and 21 are rejected under 35 U.S.C. 101 because they are directed to non-statutory subject matter. This rejection is set forth in prior Office Action mailed on July 9, 2008 and repeated here.

Regarding claim 20 lines 2-3, "one or more data structures comprising information ... represented as a string" is non-functional descriptive material, therefore, does not have a tangible result.

The same is true for claim 21.

Claim Rejections - 35 USC § 102

Claims 1-10 and 14-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Gerrevink (US 2003/0012141). This rejection is set forth in prior Office Action mailed on July 9, 2008 and repeated here.

Regarding claims 1, 18, and 19, Gerrevink disclose a method of generating data traffic in a traffic generator (see Figure 1 reference numeral 100 Test System, Test System corresponds to traffic generator), the method comprising the steps of:

generating a plurality of traffic flows (see paragraphs 31 and 44); and

associating each of the traffic flows with at least one of a plurality of output interfaces of the traffic generator such that at least two of the plurality of output interfaces each has one or more traffic flows associated therewith (see paragraph 31, forwarding multiple streams to multiple output ports of the System Under Test (SUT), wherein the SUT is a component in the Test System 100, and the Test System is interpreted as the traffic generator) and at least one of the plurality of output interfaces has two or more of the traffic flows associated therewith (see paragraphs 31, 52 and 77, a set of addresses is programmed to be routed to that output port, meaning that a plurality of traffic streams are associated with each output port);

the traffic flows comprising respective test traffic flows synthesized within the traffic generator (see paragraphs 31 and 35);

regarding claim 2, at least one of the traffic flows is generated based on user selection of at least one of a traffic model (see paragraph 36);

regarding claim 3, the output interfaces are associated with an output interface bus of the traffic generator (see paragraph 52);

   regarding claim 4, the output interface bus is implemented as a software module representative of one or more physical connections (see paragraphs 39 and 76);

   regarding claim 5, each of the plurality of traffic flows maps to one of the output interfaces of the traffic generator and to an input interface of the traffic generator (see paragraphs 31 and 52);

   regarding claim 6, the traffic generator is operable in at least two phases, including a first phase in which a timestamp table is constructed based at least in part on user-selected configuration information (see paragraph 36, time of departure of each data packet), and a second phase in which packets are generated using the timestamp table constructed in the first phase (see paragraph 37);

   regarding claim 7, the traffic generator comprises a pattern generator having a plurality of user-selectable pattern generation processes associated therewith, at least a given one of the processes generating a configuration list (see paragraph 36);

   regarding claim 8, the traffic generator comprises a sequencer having a plurality of user-selectable sequencing processes associated therewith, a given one of the sequencing processes specifying an order of selection of items from a configuration list (see paragraph 36);

   regarding claim 9, the plurality of sequencing processes comprises a group sequencer which provides a correlative mapping between two or more configuration lists and their associated parameters (see paragraphs 36 and 81);

      regarding claim 10, information characterizing one or more of the traffic flows is stored as a traffic file in a memory associated with the traffic generator (see paragraph 36);

      regarding claim 14, the traffic generator comprises a hardware traffic generator (see paragraph 36);

      regarding claim 15, the traffic generator comprises a software traffic generator (see paragraphs 34, 36, 37, and 44);

      regarding claim 16, the traffic generator comprises an element of a software-based development tool for simulating the operation of an electronic system (see paragraphs 34 and 36);

      regarding claim 17, the traffic generator is implemented primarily in software and is configured to generate data traffic files that are utilizable in another traffic generator implemented primarily in hardware (see paragraphs 34 and 36).

Claim Rejections - 35 USC § 103

      Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerrevink. This rejection is set forth in prior Office Action mailed on July 9, 2008 and repeated here.

      Regarding claim 11, Gerrevink discloses all the subject matter of the claimed invention except a global header followed by one or more frames each having an associated frame header. However, it is well known in the art that the global header is followed by frames, wherein each frame has a frame header.

Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to implement a global header followed by one or more frames each having an associated frame header.

The motivation for implementing a global header followed by one or more frames each having an associated frame header is that it allows consistency in the system because every frame complies with the global header.

(10) Response to Argument

I. REJECTION OF CLAIMS 20 and 21 UNDER 35 U.S.C. 101

Regarding claims 20 and 21, Appellants argue that claims 20 and 21 recite statutory subject matter, wherein both claims 20 and 21 recite an article of manufacture comprising a computer-readable storage medium encoded with one or more data structures comprising information characterizing one or more traffic flows associated with at least one traffic generator, represented as a string which includes a global header followed by one or more frames each having an associated frame header.

In response to Appellants' argument, the Examiner respectfully disagrees with the argument above.

Claims 20 and 21 recite data structure encoded on a computer-readable storage medium. Without generating data structure (i.e. traffic file), the data structure embedded on a computer-readable storage medium is a mere arrangement of data, which is nonfunctional descriptive material. The portion of MPEP 2106.01 states that when

nonfunctional descriptive material is recorded on some computer-readable medium, in a

computer or on an electromagnetic carrier signal, it is <u>not</u> statutory since no requisite

functionality is present to satisfy the practical application requirement, and merely

claiming nonfunctional descriptive material in a computer or on an electromagnetic

carrier signal does not make it statutory.

II. REJECTION OF CLAIMS 1-10 AND 14-19 UNDER 35 U.S.C. 102(b)

A. Claims 1-10, 14-16, 18, and 19

Regarding claims 1, 18, and 19, Appellants argue that Gerrvink fails to disclose

a limitation wherein at least one of a plurality of output interfaces of the traffic generator

has two or more of the traffic flows associated therewith.

In response to Appellants' argument, the Examiner respectfully disagrees with

the argument above.

The Examiner broadly interprets the test system 100 as the claimed traffic

generator. Thus, the output ports of the System under Test of Gerrevink are output

interfaces of a traffic generator (see Figure 1 Test System 100). Also, the limitation "<u>at</u>

<u>least one of a plurality of output interfaces</u> of the traffic generator has two or more of the

traffic flows associated therewith" can be broadly interpreted as "<u>multiple output</u>

<u>interfaces</u> of the traffic generator has two or more of the traffic flows associated

therewith" because the limitation "at least one" suggests that there may be more than

one. Gerrevink discloses that multiple streams are forwarded to multiple output ports

(see paragraph 31), where the streams are broadly interpreted as traffic flows.

Therefore, Gerrevink discloses that at least one of a plurality of output interfaces of the traffic generator has two or more of the traffic flows associated therewith.

B. Claim 17

Regarding claim 17, Appellants argue that Gerrevink fails to disclose or suggest a limitation wherein the traffic generator is implemented primarily in software and is configured to generate data traffic files that are utilizable in another traffic generator implemented primarily in hardware.

In response to Appellants' argument, the Examiner respectfully disagrees with the argument above.

Gerrevink discloses a test system comprising a test box including a processor for executing program instructions (see Figure 1 and paragraph 34), wherein the program instructions are implemented primarily in software. Gerrevink also discloses that the data generation is managed in the test box by the use of an interdeparture queue, which functions to store data representative of at least one selected traffic model, comprising both a pattern of data traffic and a traffic load (see paragraph 36), where the traffic model are utilizable by the test box 110, which is implemented primarily in hardware.

III. REJECTION OF CLAIM 11 UNDER 35 U.S.C. 103(a)

Regarding claim 11, Appellants argue that there is no teaching or suggestion directed to the limitation of claim 11 wherein a traffic file is represented as a string which includes a global header followed by one or more frames each having an associated frame header.

In response to Appellants' argument, the Examiner respectfully disagrees with the argument above.

Appellants previously requested that the Examiner provide documentary evidence to support finding in order for such a rejection to be maintained. Therefore, the Examiner previously provided Zhou et al. in the Advisory Action mailed on October 7, 2008, where Zhou et al. disclose that, in ATM communication systems, transmissions typically include a large, global header followed by a series of frames, each having its own header address (see column 1 lines 46-49). The global header followed by a series of frames are broadly interpreted as a traffic file, wherein the ATM global header followed by a series of frames inherently contain a string of digital data bits (i.e. 1 and 0). Thus, Zhou et al. disclose a traffic file is represented as a string which includes a global header followed by one or more frames each having an associated frame header.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation for the rejection is found in the knowledge generally available to one of ordinary skill in the art. The benefit of having global header preceding a series of frames is generally known to one of ordinary skill in the art, where the benefit is that each frame shares a single

global header to allow consistency in the system because every frame complies with the same global header.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Pao Sinkantarakorn/

Examiner, Art Unit 2416

Conferees:

/Ricky Ngo/

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